

REMARKS

No amendments have been made to any of the claims. Claims 1-8, 10-28 and 30-37 are still pending. Reexamination and allowance of the pending claims is respectfully requested.

Claims 1-8, 10, 12-15, 17-18, 22-28, 30, 33, 35 and 36 stand rejected under 35 U.S.C. 103(a) as being unpatentable over USP 6,122,042 to Wunderman ("Wunderman") in view of USP 6,444,476 to Morgan ("Morgan"). Claims 1-8, 10, 11, 17, 31, 32, 34 and 36 stand rejected under 35 U.S.C. 103(a) as being unpatentable over USP 5,377,000 to Berends ("Berends") in view of Morgan. Claims 18-21 and 37 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Berends in view of Morgan, and further in view of USP 5,701,173 to Rioux ("Rioux"). These rejections are respectfully traversed.

Claim 1 is the only independent claim. In these rejections, the Examiner acknowledges that the primary references (Wunderman and Berends) fail to disclose:

1. a filter placed between a light source and a photosensor (detector) ("the First Limitation");
2. radiation is emitted uninterruptedly across essentially the entire visible spectrum ("the Second Limitation"); and
3. the intensity of a light source is controllable ("the Third Limitation").

To compensate for these deficiencies, the Examiner has cited Morgan for teaching the First Limitation and the Third Limitation, but has apparently taken the position that the Second Limitation would be inherently obvious without citing any teaching from any other reference.

Applicant respectfully submits that these assertions are incorrect, and involve impermissible hindsight reconstruction. More specifically, Applicant respectfully submits that Morgan cannot be properly combined with either Wunderman or Berends, and even if the combinations were proper, that the combinations would still not yield the device claimed in claim 1.

Morgan Does Not Disclose the Second Limitation

First, Morgan does not teach emitting radiation uninterruptedly across essentially the entire visible spectrum. The Examiner at least appears to acknowledge this, since the Examiner has taken the position that this would be obvious to a person skilled in the art, since "LEDs can produce sparks at particular wavelengths that causes the illumination of the object to be uneven ...". Thus, it is clear that even if Morgan can be combined with Wunderman or Berends (which Applicant disputes below), this combination would still not

yield all the limitations of claim 1.

More importantly, it is not correct to assume, without any express teaching from another reference, that it would be obvious to emit radiation uninterruptedly across essentially the entire visible spectrum. None of the cited references teach or even remotely suggest this feature, or even the desirability of this feature.

Morgan Is Non-Analogous Art And Cannot Be Properly Combined With Wunderman and Berends

Morgan is directed to a luminescence assay using cyclical excitation wavelength sequence, and is related to a method for measuring the proximity between luminescent species based on detection of transfer excitation energy between them. Thus, Morgan is related to the field of biotechnology.

More importantly, the purposes between the present invention and Morgan are entirely different. The present invention is concerned with the determination of the quality of surfaces, while Morgan is concerned with measuring the proximity between luminescent species. These are different and unrelated objectives.

For the above reasons, a person skilled in the relevant art of the present invention would have no incentive to consider the teachings of Morgan in modifying Wunderman or Berends. Any suggestion or incentive to consider Morgan as being analogous prior art would necessarily be based on impermissible hindsight.

* * *

Claims 2-8, 10-28 and 30-37 depend from claim 1, and are submitted to be allowable for the same reasons.

In addition, Applicant respectfully submits that claim 19 defines additional patentable subject matter. Claim 19, which depends from claim 1, recites a spectral means that is arranged in the path of radiation between the illuminating means and the photosensor, and which splits the incident radiation subject to wavelengths. The Examiner acknowledges that Wunderman and Berends (and presumably Blalock as well) do not disclose this limitation, but cites Rioux for disclosing this limitation. Again, this combination is improper because Rioux is non-analogous art. In this regard, Rioux relates to a color imaging system and does not disclose a measuring surface. Applicant submits that the use of two non-analogous (or whose relevance is questionable at best) references, Blalock and Rioux, as secondary references cannot be proper and must be the result of impermissible hindsight.

Thus, all pending claims are submitted to be in condition for allowance. The

Examiner is encouraged to telephone the undersigned if there are informalities that can be resolved in a phone conversation, or if the Examiner has any ideas or suggestions for further advancing the prosecution of this case.

Respectfully Submitted,



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Dated: April 19, 2004

CERTIFICATE OF MAILING

I hereby certify that this paper and its enclosures are being deposited with the United States Postal service as First Class Mail in an envelope addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date shown below.

Date: April 19, 2004

By: 

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